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7 APPEALS, VARIANCES, INTERPRETATIONS, AND MODIFICATIONS

(11/16/04) (7/15/08) (10/18/11)

7-A APPEALS, VARIANCES, INTERPRETATIONS, AND MODIFICATIONS

There shall be established a Board of Zoning Appeals (Board) that shall consider appeals, variances, and zoning map interpretations.

7-A-1 Board of Zoning Appeals – Organization and Procedures

7-A-1-a Membership

The Board shall consist of five residents of Clarke County, appointed by the Circuit Court of Clarke County. Members of the Board shall hold no other public office in the locality except that one may be a member of the Clarke County Planning Commission.

7-A-1-b Alternate Members

The Board of Supervisors may request the Circuit Court of Clarke County to appoint not more than three alternates to the Board of Zoning Appeals, pursuant to the provisions of Virginia Code §15.2-2308(A)

7-A-1-c Terms of Office

The terms of office for members of the Board shall be for five years each except that original appointments shall be made for such terms that the term of one member shall expire each year. The Secretary of the Board shall notify the court at least thirty (30) days in advance of the expiration of any term of office, and shall also notify the Court promptly if any vacancy occurs. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members may be reappointed to succeed themselves. A member whose term expires shall continue to serve until his successor is appointed and qualifies.

7-A-1-d Officers

With the exception of its Secretary and the alternates, the Board shall elect from its own membership its officers who shall serve annual terms as such and may succeed themselves. The Board may elect as its Secretary either one of its members or a qualified individual who is not a member of the Board, excluding the alternate members. A Secretary who is not a member of the Board shall not be entitled to vote on matters before the Board.

7-A-1-e Quorum

(12/15/09)

For the conduct of any hearing, a quorum shall be not less than a majority of all the members of the Board.

7-A-1-f Procedures

The Board may make, alter and rescind rules and forms for its procedures, consistent with County ordinances and general laws of the Commonwealth.

7-A-1-g Records

The Board shall keep minutes and a full record of its proceedings and other official actions, which shall be filed in the office of the Board and shall be public records.

- 7-A-1-h Report
The Board shall submit a report of its activities to the governing body at least once each year.
- 7-A-1-i Witnesses
The Chairman of the Board, or the acting Chairman in the Chairman's absence, may compel attendance of witnesses and administer oaths of witnesses.
- 7-A-1-j Employees
Within the limits of funds appropriated by the Board of Supervisors, the Board may employ or contract for secretaries, clerks, legal counsel, consultants, and other technical and clerical services.
- 7-A-1-k Compensation
Members of the Board may receive such compensation as may be authorized by the Board of Supervisors.
- 7-A-1-l Removal
Any Board member or alternate may be removed for malfeasance, misfeasance, or nonfeasance in office, or for other just cause, by the Court that appointed the member or alternate, after a hearing held after at least fifteen (15) days notice.
- 7-A-1-m Meetings
The Board by resolution may fix a schedule of regular meetings, and may also fix the day or days to which any meeting shall be continued if the Chairman, or Vice-Chairman if the Chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting. Such finding shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised for such meeting in accordance with Virginia Code § 15.2-2312 shall be conducted at the continued meeting and no further advertisement shall be required.
- 7-A-1-n Hearings - Procedures
(2/16/16)
1. The non-legal staff of the Board of Supervisors may have ex parte communications with a member of the Board prior to the hearing but may not discuss the facts or law relative to the case before the Board. The applicant, landowner, or their agent or attorney may have ex parte communications with a member of the Board prior to the hearing but may not discuss the facts or law relative to the case before the Board. If any ex parte discussion of facts or law in fact occurs, the party engaging in such communication shall inform the other party as soon as practicable and advise the other party of the substance of such communication. For purposes of this section, regardless of whether all parties participate, ex parte communications shall not include (i) discussions as a part of a public meeting or (ii) discussions prior to a public meeting to which staff of the governing body, the applicant, landowner, or their agent or attorney are all invited. For purposes of this section, "non-legal staff of the Board of Supervisors" shall mean any staff who is not in the office of the attorney for the County, or for the Board, or who is appointed by special law or pursuant to §15.2-1542. Nothing in this section shall preclude the Board from having ex parte communications with any attorney or staff of any attorney where such communication is protected by the attorney-client privilege or protection of confidentiality.

2. Any materials relating to the case before the Board, including a staff recommendation or report furnished to a member of the Board, shall be made available without cost to an applicant, appellant, or other person aggrieved under §15.2-2314, as soon as practicable thereafter, but in no event less than three business days of providing such materials to a member of the Board. If the applicant, appellant, or other person aggrieved under §15.2-2314 requests additional documents or materials to be provided by the locality other than those materials provided to the Board, such request shall be made pursuant to §2.2-3704. Any such materials furnished to a member of the Board shall also be made available for public inspection pursuant to Subsection F of §2.2-3707.
3. At a hearing the board shall offer an equal amount of time to the applicant, appellant, any other person aggrieved under §15.2-2314, and the County staff.

7-A-1-o Appeal of Decision of Board

Any person or persons jointly or severally aggrieved by any decision of the Board, or any Aggrieved taxpayer, or any officer, department, board, or bureau of the locality, may file with the Clerk of the Clarke County Circuit Court a petition specifying the grounds on which aggrieved within 30 days after the final decision of the Board.

7-A-2 Appeals of Administrative Determinations

7-A-2-a (2/16/16) The Board shall hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of the Zoning Ordinance. The decision on such appeal shall be based on the Board's judgment of whether the administrative officer was correct. The determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer shall explain the basis for their determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence. The board shall consider any applicable ordinances, laws, and regulations in making its decision. For purposes of this section, "determination" means any order, requirement, decision, or determination made by an administrative officer. Any appeal of a determination to the Board shall be in compliance with this section, notwithstanding any other provision of law, general or special.

7-A-2-b An appeal to the Board may be taken by any person aggrieved or by any officer, department, board, or bureau of the County affected by any decision of the Zoning Administrator, or from any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of the Zoning Ordinance, or any modification of zoning requirements pursuant to Virginia Code Section 15.2-2286.

7-A-2-c (7/15/08) Any written notice of a zoning violation or any written order or administrative determination of the Zoning Administrator shall include a statement informing the recipient of the recipient's right to appeal the notice of zoning violation or the written order or administrative determination within 30 days, and that the decision shall be final and unappealable if not appealed within 30 days. The appeal period shall not commence until the statement is given. The appeal shall be taken within 30 days after the decision appealed from by filing with the Zoning Administrator, and with the Board, a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

- 7-A-2-d An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the Board that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order granted by the Board or by a court of record, on application and on notice to the Zoning Administrator and for good cause shown.
- 7-A-2-e The Board shall fix a reasonable time for hearing an appeal, and shall give public notice and hold a public hearing as provided by Virginia Code § 15.2-2204. However, when giving any required notice to the owners, their agents, or the occupants of abutting property and property immediately across the street or road from the property affected, the Board may give such notice by first-class mail rather than by registered or certified mail.
- 7-A-2-f The Board shall make its decision within 90 days of the filing of the appeal, unless the appellant and the Board mutually agree upon an extended period.
- 7-A-2-g In exercising its powers, the Board may reverse or affirm, wholly or partly, or may modify, an order, requirement, decision, or determination appealed from.
- 7-A-2-h The concurring vote of a majority of the membership of the Board shall be necessary to reverse any order, requirement, decision, or determination of an administrative officer.
- 7-A-3 Variances
- 7-A-3-a The Board shall hear upon appeal or original application in specific cases requests for variances, as defined in Virginia Code §15.2-2201, from the terms of this ordinance. A variance shall not include a change in use.
- 7-A-3-b Any property owner, tenant (with the written consent of the property owner), government official, department, board, or bureau may make application for a variance. Applications shall be made to the Zoning Administrator in accordance with rules adopted by the Board. The application and accompanying maps, plans, or other information shall be transmitted promptly to the Secretary of the Board, who shall place the matter on the docket to be acted upon by the Board.
- 7-A-3-c The Zoning Administrator shall also transmit a copy of the application to the Planning Commission, which may send a recommendation to the Board or appear as a party at the hearing.
- 7-A-3-d No variance shall be considered except after public notice and hearing as required by Virginia Code §15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the Board may give such notice by first-class mail rather than by registered or certified mail.
- (2/16/16)
- 7-A-3-e Action on Variance Application
- (2/16/16)
1. The burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that the application meets the standards for a variance as defined in Va. Code §15.2-2201 and the criteria set out in this section.
 2. Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the

variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and:

- a. the property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance;
- b. the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;
- c. the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance;
- d. the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and
- e. the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of §15.2-2309 or the process of modification of a zoning ordinance pursuant to subdivision A4 of §15.2-2286 at the time of the filing of the variance application.

7-A-3-f The concurring vote of a majority of the membership of the Board shall be necessary to approve a variance.

7-A-3-g In granting a variance the Board shall tailor the variance to provide the minimum variance necessary to alleviate the hardship, and the Board may impose such conditions regarding the location, character, and other features of the proposed structure or use, as it may deem necessary in the public interest. The Board may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

7-A-3-h The Board will not consider substantially the same application within one year of previous Board action.

7-A-4 **Zoning District Map Interpretations**
The Board shall hear and decide applications for interpretation of the zoning district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by the question, and after public hearing with notice as required by Virginia Code Section *15.2-2204*, the Board may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. However, when giving any required notice to the owners, their agents, or the occupants of abutting property and property immediately across the street or road from the property affected, the Board may give such notice by first-class mail rather than by registered or certified mail. The Board shall not have the power to change substantially the locations of district boundaries as established by ordinance. The concurring vote of a majority of the membership of the Board shall be necessary to decide in favor of the applicant.

7-A-5 **Limitation on Powers of Board**
The Board shall not have the power to rezone property or to base Board decisions on the merits of the purpose and intent of County ordinances duly adopted by the Board of Supervisors.

7-B MODIFICATIONS

- 7-B-1 The Zoning Administrator may grant a modification from any provision contained in the Zoning Ordinance with respect to physical requirements on a lot or parcel of land, including but not limited to size, height, location or features of or related to any building, structure, or improvements, if the Administrator finds in writing that:
1. the strict application of the ordinance would produce undue hardship;
 2. such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and
 3. the authorization of the modification will not be of substantial detriment to adjacent property and the character of the zoning district will not be changed by the granting of the modification.
- 7-B-2 The Zoning Administrator may not grant a modification that is more than 10% of a regulation standard.
- 7-B-3 Before the granting of a modification, the Zoning Administrator shall give, or require the applicant to give, all adjoining property owners written notice of the request for modification, and an opportunity to respond to the request within 21 days of the date of the notice. Before the granting of a modification, the Zoning Administrator shall consult with the Chair and Vice-Chair of the Board of Zoning Appeals.
- 7-B-4 The Zoning Administrator shall make a decision on the application for modification and issue a written decision with a copy provided to the applicant and any adjoining landowner who responded in writing to the notice sent pursuant to this paragraph. The Zoning Administrator shall provide a copy of a written decision to the Board of Zoning Appeals within five working days from making the decision.
- 7-B-5 (2/16/16) The decision of the Zoning Administrator may be appealed to the Board of Zoning Appeals as provided in 7-A-2 of this Ordinance.